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09/816,132	03/26/2001	Atsushi Yoshida	1095.1177	5890

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EXAMINER

PHAN, TAM T

ART UNIT

PAPER NUMBER

2144

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/816,132

Applicant(s)

YOSHIDA ET AL.

Examiner

Tam (Jenny) Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) 5-13 and 24-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This application has been examined. Amendment received on 10/13/2004 has been entered. Claims 1-4 and 14-23 are presented for examination.

### ***Election/Restrictions***

2. Applicant's election of Group I (claims 1-4 and 14-23) in the reply filed on 10/13/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 5-13 and 24-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/13/2004. Examiner is appreciative of the courtesy shown by Applicant in discussions of this restriction requirement.

### ***Priority***

4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

5. The effective filing date for the subject matter defined in the pending claims which has support in parent JP 2000-329952 in this application is 10/30/2000. Any new subject matter defined in the claims not previously disclosed in parent JP 2000-329952, is entitled to the effective filing date of 03/26/2001.

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6. Should applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference, a translation of the foreign application should be submitted under 37 CFR 1.55 in reply to this action.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. Claims 1, 14, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Nepustil (U.S. Patent Number 6,240,454).

9. Regarding claim 1, Nepustil disclosed a service execution method comprising: receiving a service request from a user (Abstract, column 2 lines 20-46); obtaining load information of a server device corresponding to the service request from a device for managing the load information of the server device (Figures 3-5, column 4 lines 17-32); and requesting another server device to process the service request if it is judged that a load on the server device included in the load information is higher than a predetermined value (Figures 3-5, column 2 lines 20-46, column 4 lines 33-59, column 5 lines 14-24).

10. Regarding claim 14, Nepustil disclosed a service execution method comprising: making a service request to a service supplier by using a client device (Abstract, column 2 lines 20-46); and acquiring load information of a server device corresponding to the service request from a device by means of which the service supplier manages the load

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information of the server device, and if it is judged that a load on the server device included in the load information is higher than a predetermined value, receiving by means of the client device a result of processing by another server device (Figures 3-5, column 2 lines 20-46, column 4 lines 17-59, column 5 lines 14-24).

11. Regarding claim 18, Nepustil disclosed a service execution apparatus comprising: means for receiving a service request from a user (Abstract, column 2 lines 20-46); means for obtaining load information of a server device for processing the service request (Figures 3-5, column 4 lines 17-32); means for determining whether or not a load on the server device included in the load information is higher than a predetermined value (Figures 3-5, column 4 lines 33-59, column 5 lines 14-24); and means for requesting another server device to process the service request if it is judged that the load on the server device is higher than the predetermined value (Figures 3-5, column 2 lines 20-46, column 4 lines 33-59, column 5 lines 14-24).

12. Since all the limitations of the claimed invention were disclosed by Nepustil, claims 1, 14, and 18 are rejected.

13. Claims 1, 14, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Zisapel et al. (U.S. Patent Number 6,665,702), hereinafter referred to as Zisapel.

14. Regarding claim 1, Zisapel disclosed a service execution method comprising: receiving a service request from a user (column 3 lines 28-47); obtaining load information of a server device corresponding to the service request from a device for managing the load information of the server device (column 3 lines 10-15, column 13

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lines 2-18, column 19 line 56-column 20 line 4); and requesting another server device to process the service request if it is judged that a load on the server device included in the load information is higher than a predetermined value (column 3 lines 10-15, column 6 lines 5-11, column 7 lines 18-25, column 17 lines 6-17, column 19 line 56-column 20 line 4).

15. Regarding claim 14, Zisapel disclosed a service execution method comprising: making a service request to a service supplier by using a client device (column 3 lines 28-47); and acquiring load information of a server device corresponding to the service request from a device by means of which the service supplier manages the load information of the server device, and if it is judged that a load on the server device included in the load information is higher than a predetermined value, receiving by means of the client device a result of processing by another server device (column 3 lines 10-15, column 6 lines 5-11, column 7 lines 18-25, column 17 lines 6-17, column 19 line 56-column 20 line 4).

16. Regarding claim 18, Zisapel disclosed a service execution apparatus comprising: means for receiving a service request from a user (column 3 lines 28-47); means for obtaining load information of a server device for processing the service request; means for determining whether or not a load on the server device included in the load information is higher than a predetermined value (column 3 lines 10-15, column 13 lines 2-18, column 19 line 56-column 20 line 4); and means for requesting another server device to process the service request if it is judged that the load on the server device is

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higher than the predetermined value (column 3 lines 10-15, column 6 lines 5-11, column 7 lines 18-25, column 17 lines 6-17, column 19 line 56-column 20 line 4).

17. Since all the limitations of the claimed invention were disclosed by the Zisapel, claims 1, 14, and 18 are rejected.

***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 2-4, 15-17, and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nepustil (U.S. Patent Number 6,240,454) in view of Kraft et al. (U.S. Patent Number 6,832,239), hereinafter referred to as Kraft.

20. Regarding claim 2, Nepustil disclosed a service execution method comprising: receiving a service request from a user (Abstract, column 2 lines 20-46); obtaining load information of a server device corresponding to the service request from a device for managing the load information of the server device (Figures 3-5, column 4 lines 17-32); and requesting another server device to process the service request if it is judged that a load on the server device included in the load information is higher than a predetermined value (Figures 3-5, column 2 lines 20-46, column 4 lines 33-59, column 5 lines 14-24). Nepustil further disclosed obtaining load information of the other server device from a device for managing the load information of the other server device (Figures 3-5, column 4 lines 33-49, column 5 lines 14-24).

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21. Nepustil taught the invention substantially as claimed. However, Nepustil did not expressly teach a service execution method having a step of sending a process delay notification to the user if it is judged that a load on the other server device is higher than the predetermined value.

22. Nepustil suggested exploration of art and/or provided a reason to modify the service execution method with additional features (column 5 line 47-column 6 line 3).

23. Kraft disclosed a service execution method having a step of sending a process delay notification to the user if it is judged that a load on the other server device is higher than the predetermined value (Figure 3C, column 6 lines 39-55, column 7 lines 17-24).

24. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Nepustil with the teachings of Kraft to include the notification feature in order to inform the client user of the delay process (column 7 lines 27-30) since when the client user does not have positive information regarding the server status, they might infer the delay in performing the download was at fault due to some computer or communication resource (column 2 lines 2-6). Slow service request and the lack of information for the client user might lead to increase client user anxiety, and dissatisfaction with the Internet experience (column 2 lines 6-9).

25.

26. Regarding claim 3, Kraft disclosed a service execution method further comprising: adding the service request with respect to which the process delay notification is sent, to an end of a queue for holding service requests with respect to



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which the process delay notification is sent; and processing a service request at head of the queue by the server device if it is judged that the load information of the server device obtained from the device for managing the load information is lower than the predetermined value (Figure 3C, column 6 lines 39-55, column 7 lines 17-24, column 7 lines 50-column 8 lines 13).

27. Regarding claim 4, Kraft disclosed a service execution method wherein the service request is processed by sending mail to the user (column 7 lines 17-40).

28. Regarding claim 15, Nepustil and Kraft disclosed a service execution method further comprising: acquiring load information of the other server device from a device by means of which the service supplier manages the load information of the other server device (Nepustil, Figures 3-5, column 4 lines 33-49, column 5 lines 14-24), and if it is judged that a load on the other server device is higher than the predetermined value, receiving a process delay notification by means of the client device (Kraft, Figure 3C, column 6 lines 39-55, column 7 lines 17-24).

29. Regarding claim 16, Kraft disclosed a service execution method further comprising: adding the service request with respect to which the process delay notification is sent, to an end of a queue for holding service requests with respect to which the process delay notification is sent, and if it is judged that the load information of the server device obtained from the device for managing the load information is lower than the predetermined value, receiving by means of the client device a result of processing of a service request at head of the queue by the server device (Figure 3C, column 6 lines 39-55, column 7 lines 17-24, column 7 lines 50-column 8 lines 13).

30. Regarding claim 17, Kraft disclosed a service execution method wherein a user receives the result of processing of the service request by mail transmitted to the client device (column 7 lines 17-40).

31. Regarding claim 19, Nepustil disclosed a service execution apparatus further comprising: means for obtaining load information of the other server device; and means for determining whether or not a load on the other server device included in the load information of the other server device is higher than the predetermined value (Figures 3-5, column 4 lines 33-49, column 5 lines 14-24).

32. Regarding claim 20, Kraft disclosed a service execution apparatus further comprising: means for sending a process delay notification to the user if it is judged that the loads on both the server device and the other server device are higher than the predetermined value (Figure 3C, column 6 lines 39-55, column 7 lines 17-24).

33. Regarding claim 21, Kraft disclosed a service execution apparatus further comprising: a queue for holding service requests with respect to which the process delay notification is sent, and queue creating means for adding to the queue the service request with respect to which the process delay notification is sent (Figure 3C, column 6 lines 39-55, column 7 lines 17-24, column 7 lines 50-column 8 lines 13).

34. Regarding claim 22, Nepustil disclosed a service execution apparatus wherein the server device and the other server device include respective content storage devices for storing content corresponding to the service request from the user, said content storage devices including means for holding identical content synchronized with each other (column 1 line 60-column 2 line 4, column 3 lines 29-39, lines 40-49).

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35. Regarding claim 23, Nepustil disclosed a service execution apparatus wherein the content is synchronized by transmitting/receiving a difference in updated content (column 1 line 60-column 2 line 4, column 3 lines 29-39, lines 40-49).

36. Since all the limitations of the claimed invention were disclosed by the combination of Nepustil and Kraft, claims 2-4, 15-17, and 19-23 are rejected.

### ***Conclusion***

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Akizawa et al. (U.S. Patent Number 5,548,724) disclosed " a file server system having a plurality of file servers connected in parallel on a network and sharing files placed distributedly in the file servers among a plurality of client computers, and there are provided in a specific file server among the plurality of file servers, a load information monitoring device for measuring respective loads of the plurality of file servers and a file access request distributing device for referring to the loads measured by the load information monitoring device so as to select a file server having a light load from the plurality of file servers having light loads, and distributing a file access request transmitted from client computers to the selected file server.

b. Doroswamy et al. (U.S. Patent Number 6,128,642) titled "Load balancing based on queue length, in a network of processor stations" disclosed a method and system for distributing a job load from a local processor station to at least one processor station within a plurality of processor stations connected by a

multi-access channel. Each workstation on a network determines the availability of other workstations. First, each workstation on the network locally determines if the number of jobs waiting for execution exceeds a predetermined threshold. If the number of waiting jobs is below the threshold, then the jobs are processed locally. If the number of waiting jobs exceeds the threshold, then the local workstation randomly probes a remote workstation in the network to determine whether the number of processing jobs already in service or waiting for service at that remote workstation are less than some threshold value.

c. Miloslavsky et al. (U.S. Patent Number 6,581,105) disclosed a statistics server (stat-server) records activities of the call center, and the routing performed by the router further uses the recorded activity in the stat-server. Routing of e-mails to selected agents is load-balanced based on recorded activity stored in the stat-server. An overload threshold may set for number of e-mails to be routed, and senders of e-mails are then notified of a possible delay when the threshold is exceeded.

38. Refer to the enclosed PTO-892 for details and complete listing of other pertinent prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (571) 272-3930. The examiner can normally be reached on M-F 9:00-5:00.

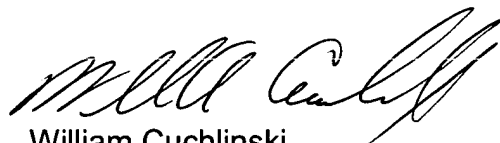
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (571) 272-3925. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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March 15, 2005